IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 474 OF 2004

Syndicate Bank,
A body corporate
constituted under
the Banking Companies
(Acquisition & Transfer
of undertakings) Act V
of 1970 with its Head
Office at Manipal and
Branch Office at
Vasco-da-Gama, Goa. ... Applicant

versus

1. M/s. Aqua Bakers Pvt.
   Ltd., A company incorporated
   under the Companies Act,1956
   and Having its registered
   office at C/2, Dharmanand
   Kossambi Building, Swatantra
   Path, Vasco-da-Gama, Goa.

2. Economic Development Corporation
   of Goa, Daman & Diu Ltd.,
   a Company incorporated under the
   Companies Act, 1956, and having
   its registered Office at EDC
   House, Dr. Atmaram Borkar Road,
   P.B.No.316, Panaji, Goa. ... Respondents

Mr. S. G. Dessai, Senior Counsel with Mr. S. D. Padiyar, Advocate for the Applicant.

Mr. S. K. Kakodkar, Senior Counsel with Mr. Joel D'Souza, Advocate for Respondent No.1.

Ms. P. Bharne, Advocate for Respondent No.2.

CORAM : S.A.BOBDE &
N.A. BRITTO, JJ.

DATE : 20TH JULY, 2004.

ORAL ORDER(PER S.A.BOBDE, J.)

The Applicant/Bank has preferred this application for dismissal of the Appeal as having been compromised under Order 23 Rule 3 of the Civil Procedure Code. According to the Bank, the Appeal cannot be pursued by the Appellants since it is one of the terms of the understanding as evidenced by the letter dated 9th January, 1998, that the Appellants will withdraw this Appeal. That condition is Condition No.6 in the letter which reads as follows:-

> "6. M/s. Aqua Bakers Pvt. Ltd. - the first appeal no.52 of 1997 filed in the High Court of Judicature at Bombay Panaji branch against the decree dt.30/12/96 passed by Civil Judge Sr.Divn. Vasco in Spl. Civil Suit no.4/90, praying for reliefs. This appeal shall not be pursued further by you and shall be withdrawn immediately on receipt of communication of

this sanction letter, as assured by you".

2. On a reading of the entire settlement contained in the letter dated 9th January, 1998, the said letter also contained Condition No.5 which reads as follows:-

> "5. If the payment is not made as per the terms and within the stipulated period, the concession granted shall stand revoked and entire dues shall be recovered from the borrowers in full charging normal and penal interest applicable to the dues".

3. The said settlement, therefore, clearly was not a concluded settlement and provides for the consequence of non performance. In fact, Mr. S. K. Kakodkar, learned Senior Counsel for Respondent No.1, however, rightly refers to a letter written by the Applicant/Bank dated 12th January, 2004, which shows that the settlement was to become effective after filing of the Consent Terms in the DRT, where the suits of the Bank against other Group Companies are pending.

4. In this view of the matter, we are not inclined to accept the contention of the Bank that the matter has been settled with the result that the Appellants/Plaintiffs are not entitled to pursue their

Appeal. We, therefore, reject this Miscellaneous Civil Application.

S. A. BOBDE, J.

N. A. BRITTO, J.

RD.